

HOUSE BILL REPORT

HB 1218

As Reported by House Committee On: Transportation

Title: An act relating to implementing public-private partnership best practices for nontoll transportation projects.

Brief Description: Implementing public-private partnership best practices for nontoll transportation projects.

Sponsors: Representatives Zeiger, Clibborn, Orcutt, Fey, Kochmar, Hargrove, Muri, Pike, Hayes, Stambaugh, Magendanz, Buys and Moscoso.

Brief History:

Committee Activity:

Transportation: 2/2/15, 2/9/15 [DP].

Brief Summary of Bill

- Limits certain provisions of the Transportation Innovative Partnerships (TIP) program only to toll projects.
- Allows the state to enter into predevelopment agreements to develop TIP projects under certain circumstances.
- Requires the Washington State Transportation Commission (WSTC) to approve projects that dispose of state assets and those that would significantly bind future legislatures and approve project financing that does not pledge the state's credit.
- Approves a design-build project delivery process for certain TIP projects.
- Exempts TIP projects from surety bond requirements unless required by the WSTC or the Washington State Department of Transportation.

HOUSE COMMITTEE ON TRANSPORTATION

Majority Report: Do pass. Signed by 24 members: Representatives Clibborn, Chair; Farrell, Vice Chair; Fey, Vice Chair; Moscoso, Vice Chair; Orcutt, Ranking Minority Member; Hargrove, Assistant Ranking Minority Member; Bergquist, Gregerson,

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Harmsworth, Hayes, Kochmar, McBride, Moeller, Morris, Ortiz-Self, Pike, Riccelli, Sells, Shea, Takko, Tarleton, Wilson, Young and Zeiger.

Staff: Andrew Russell (786-7143).

Background:

The Transportation Innovative Partnership (TIP) program, codified in chapter 47.29 RCW, lays the framework for project delivery through public-private partnerships. The goals of the TIP program include reducing the cost of project delivery, encouraging business investment in public infrastructure, and developing partnerships between private entities and the public sector to advance public purposes on mutually beneficial terms. The TIP program provides guidance regarding the review and selection of projects, approval and execution of the procurement contracts, and additional oversight of the project. Responsibility for each of these functions is delegated to either the Washington State Transportation Commission (WSTC) or the Washington State Department of Transportation (WSDOT).

Eligible Projects and Financing.

A project is eligible under the TIP program if the "state's primary purpose for the project is to facilitate the safe transport of people or goods via any mode of travel." Additionally, certain concurrent development projects are eligible if they provide revenues to support a transportation project or they advance public purposes. Development of these eligible projects may be financed through various methods, including grant anticipation revenue bonds, federal funds, assistance from the Transportation Infrastructure Account, state or local revenues pursuant to appropriation, and user fees, fares, lease proceeds, or receipts from sales. Additionally, a project may be financed by tolls if authorized by the Legislature.

Project Solicitation, Review, and Selection.

The WSTC, in coordination with the WSDOT, may solicit projects for potential development under the TIP program. Before approving a project for solicitation, the WSTC must ensure the project is either a priority need for the state or that it is included in the state's Transportation Plan. Additionally, the WSDOT may evaluate projects for inclusion in the TIP program, and it may recommend projects for solicitation that meet the policy goals of the TIP program. After July 1, 2015, the WSTC may also consider unsolicited proposals.

After the WSDOT has received responses to a request for proposals under the TIP program, it must conduct a preliminary review to ensure that the proposals are complete. Proposals are then forwarded to an evaluation panel appointed by the WSTC, which must include a financial expert, an independent representative from a contracting firm, an observer from the State Auditor's office or the Joint Legislative Audit and Review Committee, and a WSDOT representative. The evaluation panel must consider whether the proposal meets the criteria specified in the request for proposals, and the panel may consider any other factors that it believes necessary to ensure the project benefits the public interest. Additionally, for a tolled project, the panel must consider other factors relating specifically to the impact of the tolled project. After receiving recommendations from the evaluation panel, the WSTC may proceed to negotiations with one proposer, competitive negotiations with more than one proposer, or reject all proposals.

Contract Execution.

After the WSTC selects an apparent successful proposer, the WSDOT must notify the proposer of the state's intent to negotiate and execute an agreement. The negotiation must then be referred to a negotiation team within the WSDOT. Any agreement under the TIP program must include terms relating: to maintenance complying with collective bargaining agreements, civil service laws, and the Personnel System Reform Act; to security for the payment of laborers, subcontractors, and suppliers; to the project financing and auditing; to how the parties will share costs, management, and any cost overruns; to contract incentives and penalties; to requirements for facilities that revert to state ownership; and to law enforcement on TIP projects. Before any agreement is executed, there must be a process that provides for public involvement in the process, the Attorney General must review the legal sufficiency of the agreement, and the WSTC must conduct a financial analysis of the project and must consider the WSDOT's ability to complete the project internally. The WSTC must then conduct a final review, and it may approve the agreement, reject the agreement, or return the agreement for further negotiations.

Additional Oversight.

The WSDOT must convene an expert review panel to "review, analyze, and make recommendations to the Governor and the [WSTC] on whether to approve, reject, or continue negotiations on a proposed project agreement." This panel must consist of at least three, but no more than five members, each of who hold expertise relevant to the TIP program. Additionally, for projects with costs greater than \$300 million, the WSTC must appoint an advisory committee. The committee must consist of at least five, but no more than nine, members. The committee must meet at least twice each year, review concepts and proposals for eligible projects, and submit comments to public sector partners.

Summary of Bill:

Toll Projects.

A number of provisions relating to project development and oversight are limited only to toll projects or toll facilities. The following are required only for toll projects developed under the TIP program:

- an evaluation panel to review projects before development may move forward;
- an expert review panel to make recommendations to the Governor and the WSTC;
- an advisory committee for projects with costs greater than \$300 million;
- the WSTC's consideration of the WSDOT's ability to complete the project internally and factors including the priority, cost, risk sharing, scheduling, and management conditions;
- a provision for public input in the project development process;
- the WSTC rules that relate to unsolicited proposals, including review criteria, required proposal information, and the proposal review process;
- approval from the State Finance Committee or the board of a public benefit corporation for a toll project that includes development of associated projects that provide revenue to support the toll project or advance public persons unrelated to transportation; and
- the requirement that only state debt may be issued for TIP projects.

Project Development.

Projects that are eligible for the TIP program need not be included in the state's transportation plan, nor be identified as a priority need for the state. Additionally, the design-build project development process is approved for TIP projects in which the total project cost is under \$10 million. Such a TIP project may use design-build only if the construction is highly specialized and design-build is critical in developing the construction methodology, the project provides the opportunity for greater innovation or efficiencies between the designer and the builder, or it may save significant project delivery time. The WSTC may oversee a project review and approval process that allows the WSDOT to enter predevelopment agreements for the TIP projects. Furthermore, the WSDOT may competitively procure a development partner based solely on that partner's qualifications to develop a non-toll road project under the TIP program as part of a pilot program; however, this pilot program is limited to five projects, each under \$10 million in value.

Project Financing.

Project financing may include the exchange of development rights and the equivalent value exchanges of property. Additionally, the WSTC must approve project financing that does not pledge the state's credit, and it must review and approve any project that proposes to either permanently dispose of state assets or "incur obligations that would significantly bind" future legislatures. Unless otherwise required by the WSTC or the WSDOT, TIP projects are not required to include a surety bond covering performance of the contract, payment of laborer and subcontractors, and payment of taxes and penalties.

Collective Bargaining.

The collective bargaining rights of employees are not affected by the act.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) Public-private partnerships are allowed in statute, but the statute is restrictive. This is a modest attempt to open up the statute for a limited kind of project—non-toll projects. This is a recommendation from the WSTC, it is a reasonable reform, and it could provide additional economic development in the state. The committee passed this bill unanimously two years ago.

The WSTC did a best practices review a few years ago and issued a full report. When we looked at how public-private partnership projects were implemented elsewhere, they had nothing to do with tolling. We wanted to set aside the tolling partnerships from the non-tolling partnerships. The current public-private partnership statute requires a meandering

process. Amendments to current law in this bill are to clarify that something different would be prescribed for something that doesn't involve tolls. The current law was written for toll projects as a way to protect the state against bad toll deals. This continues to be necessary for toll projects, but for smaller projects a simpler process is necessary. The bill essentially carries forward the recommendations from the WSTC and allows the state to start testing some new tools in this framework. It provides protections for the state and private partners who may want to get involved—current law requires a heavy lift at the beginning of the project development for private partners.

(Opposed) None.

Persons Testifying: Representative Zeiger, prime sponsor; and Reema Griffith, Washington State Transportation Commission.

Persons Signed In To Testify But Not Testifying: None.